

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 1097 of 1995****For Approval and Signature:****HONOURABLE MR.JUSTICE JAYANT PATEL**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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VITHALBHAI KODARBHAI PATEL - Petitioner(s)

Versus

AAGIA GAMNI SEVA SAHKARI MANDALI LTD & 4 - Respondent(s)

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Appearance :

MR RN SHAH for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 4.
MR SANJAY M AMIN for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL**Date : 01/03/2006****ORAL JUDGMENT**

- 1.The short facts of the case are that the respondent No. 1 Society preferred a suit for recovery of Rs. 17,529/- with interest against the defendants including the petitioner herein. The learned Nominee after trial of the Suit passed the Judgment and Award dated

18.09.1993, in favour of the Society against the orig. defendant Nos. 1 to 4 including the petitioner herein for suit amount with interest @ 13%. However, the suit against the orig. defendant No. 5 was dismissed. It appears that the petitioner carried the order before the Tribunal being Appeal No. 472 of 1993 and the Tribunal ultimately after hearing both the sides passed the Judgment and Order dated 19.08.1994, whereby the appeal of the petitioner-appellant is dismissed. However, the Award of the Nominee was modified to the extent that the orig. Defendant No. 5 was also made liable to pay the amount of Rs. 5,000/- with interest @ 13%. It is under these circumstances, the petitioner has preferred the petition.

2.It appears that the orig. defendant No. 5 preferred Special Civil Application No. 290 of 1995 before this Court for challenging the Judgment of the Tribunal which is also impugned in this petition. The said petition was admitted. This petition also came to be heard and Rule was ordered to be heard with Special Civil Application No. 290 of 1995. Thereafter, it appears that Special Civil Application No. 290 of 1995 has been decided by this Court (Coram : K.S. Jhaveri, J.) on 09.12.2005 and the said petition for the reasons recorded in the said decision, is dismissed. However, it appears that though this Special Civil Application was to be heard simultaneously, in view of the aforesaid judicial order passed by this Court on 17.02.1995, but this petition could not be heard and is being heard today.

3.It appears that both the Courts below have concurrently

found that the father of the petitioner is party to the execution of the document and the Tribunal while re-appreciating the evidence at para 16, has observed that the document Karajkhat are signed by Kodarbhai Ganeshbhai on 30.06.1975 vide Exh. 43 and therefore, under these circumstances, the finding recorded by the learned Nominee and its confirmation thereof by the learned Tribunal is after appreciation and re-appreciation of the evidence. The scope of judicial scrutiny by this Court under Article 227 of the Constitution is limited inasmuch unless it is demonstrated that any jurisdictional error is committed or that the discretion exercised by the lower Court/Tribunal is so perverse, this Court normally would not interfere with the decision of the lower authority. In the present case, as the finding is recorded after appreciation and re-appreciation of the evidence, this Court even otherwise also would not undertake the exercise of re-appreciation of the evidence while exercising the power under Article 227 of the Constitution.

4. Apart from the above, the case of the orig. respondent No. 5 who preferred Special Civil Application No. 290 of 2005 was better in comparison to the petitioner herein and the very judgment of the Tribunal was under challenge. In the said Special Civil Application No. 290 of 1995, this Court has also not upset the Judgment of the Tribunal and therefore, if the case of the petitioner is compared with the case of the respondent No. 5 who was petitioner in Special Civil Application No. 290 of 1995, it would be an additional reason for not to upset the decision of the learned Nominee and

which is confirmed by the Tribunal.

5. In view of the above, petition fails. Hence, the same is dismissed. Rule discharged. Interim relief vacated. Considering the facts and circumstances, there shall be no order as to costs.

(JAYANT PATEL, J.)

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